IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8420 OF 2005

Smt. Nisha Bhagchand Kriplani
and ors. ..Petitioners

Vs.

Shri Shankarlal Devkaran Parmar
and ors. ..Respondents

Mr. R.V. Sipahimalani i/by M/s. V.T. Siphimalani for petitioners.

Mr. D.C. Pathak for respondent no.1A to 1F.

CORAM: B.H. MARLAPALLE, J.

Date : April 26, 2007.

P.C.:

1. Heard the learned counsel for the petitioners and the respondents.

2. Rule. The respondents waive service. By consent of the parties, the petition is taken up for final hearing forthwith.

3. R.A.E. and R Suit No. 1506/5347 of 1978 came to be decreed by the Small Causes Court in favour of

the respondents-landlords and the present petitioners-tenants challenged the said decree in Appeal No. 405 of 2001. The Appellate Bench of the Small Causes Court dismissed the said appeal on 24/6/2006 and, therefore, the appellants took out Misc. Notice No.451 of 2005 on 29/8/2005 for setting aside the dismissal order and for restoration of the appeal for its disposal on merits. The said notice was made absolute on 6/10/2005 and the order dated 24/6/2005 was set aside but on the condition that the appellants would deposit arrears of rent of Rs.22,021/- within the two weeks i.e. on or before 20/10/2005. However, the appellants did not deposit the amount within time and, therefore, the appeal stood dismissed automatically. Consequently, on 29/10/2005 the appellants filed an application for condonation of delay and permission to deposit arrears of rent by instalments of Rs.5000/- each. This application dated 29/10/2005 filed in Misc. Notice No.451 of 2005 has been rejected by the Lower Appellate Court by the impugned order.

4. The learned counsel for the landlords has

placed before me a statement of the rent and tax arrears upto April 2007 and from the same it appears that an amount of Rs.27,208/- is due to be recovered from the tenants. The learned counsel for the tenants states that the said amount of arrears will be deposited within a period of two weeks with the Lower Appellate Court and on that undertaking he prays for condonation of delay as well as the restoration of Appeal No. 405 of 2001 for being heard and decided on merits.

5. The appeal having been restored as per the order dated 6/10/2005, the same came to be dismissed solely on the ground that the deposit of arrears of rent in compliance with the said order was sought to be made beyond time by 9 days. Appeal being a statutory remedy, it should not be allowed to be dismissed only on such technicality and so long as the appellants are willing to pay the arrears within the reasonable period and, in fact, it appears from the impugned order that the appellants had offered to remit the arrears of rent of Rs.22021/- on 29/10/2005. This approach of the Lower Appellate Court could not

meet the ends of justice.

6. Hence, this petition succeeds to the extent of restoration of the appeal and the same is hereby allowed. The impugned order dated 8/11/2005 is hereby quashed and set aside and Appeal No. 405 of 2001 is restored to the file of the Lower Appellate Court subject to the condition that the amount of Rs.27,208/- by way of arrears of rent is deposited by the petitioners with the Registry of the Small Causes Court by 17th May, 2007. Undoubtedly, the landlords would be at liberty to withdraw the amount so deposited. Rule made absolute accordingly.

(B.H. Marlapalle,J.)